

EXHIBIT B

THE TRANSCRIPT

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 22-41452-nhl

4 - - - - - x

5 In the Matter of:

6
7 TCN LIBERTY MANAGEMENT INC.,

8
9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 271-C Cadman Plaza East

13 Brooklyn, NY 11201

14
15 February 21, 2023

16 11:00 AM

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20
21 B E F O R E:

22 HON NANCY HERSHEY LORD

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: UNKNOWN

1 HEARING re [40] Motion for Relief from Stay Fee Amount \$188.
2 Filed by Jonathan B Nelson on behalf of Deutsche Bank
3 National Trust Company, as Trustee for the Registered
4 Holders of CBA Commercial Assets, Small Balance Commercial
5 Mortgage Pass-Through Certificates, Series 2006-2.

6
7 HEARING re Adj [35] Amended Application to Employ Jacobs
8 P.C. as Debtors Counsel Filed by Ilevu Yakubov on behalf of
9 TCN Liberty Management Inc.

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11 HEARING re Adj [18] Status Conference.

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25 Transcribed by: Sonya Ledanski Hyde

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6 BY: JENNIFER DARTEZ

7 AARON SLAVUTIN

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1 P R O C E E D I N G S

2 CLERK: The next matter is in the cases of TCN
3 Liberty Management Inc. and QVA9 Management --

4 THE COURT: Please -- I -- Ms. Harold, call these
5 separately, please.

6 CLERK: Okay. Will do. TCN Liberty Management
7 Inc.

8 THE COURT: Appearances.

9 MR. SLAVUTIN: Your Honor, Aaron Slavutin with
10 Jacobs P.C., here on behalf of the Debtor, the
11 (indiscernible) agreement attorney.

12 THE COURT: Go on.

13 MS. LATEEF: Your Honor -- good morning, Your
14 Honor, Reema Lateef on behalf of the Office of the United
15 States Trustee. Thank you.

16 MR. WEISSBERG: Good morning, Your Honor. Aaron
17 Weissberg from Dorf & Nelson on behalf of Deutsche Bank.

18 MS. DARTEZ: Your Honor, this is Jennifer Dartez.
19 I filed a motion to appear pro hac vice on Thursday. I
20 would like to -- with Jacobs, P.C. and the Debtor. I would
21 like to appear on the motion to lift the stay hearing. And
22 an order hasn't been entered yet.

23 THE COURT: Okay. And where are you currently
24 admitted?

25 MS. DARTEZ: Louisiana and Washington, D.C.

1 THE COURT: Okay. And you're in good standing?

2 MS. DARTEZ: In both districts because I'm doing
3 bankruptcy last 10 years since I'm in Louisiana and Texas.

4 THE COURT: Okay. I like Louisiana. New Orleans?

5 MS. DARTEZ: Yes.

6 THE COURT: Oh, you're -- I'm so jealous. Anyway,
7 all right. Yeah, motion to -- motion for pro hac vice be
8 granted. I'll will -- I'll enter the order when I see it in
9 my box.

10 MS. DARTEZ: Thank you, Your Honor.

11 THE COURT: And you're -- who are you coming in
12 for?

13 MS. DARTEZ: The Debtor, TCN with Jacobs P.C.

14 THE COURT: Oh, you're not making it easy for
15 yourself. I'll tell you; you've got an uphill battle here,
16 I think. All right. So, hang on a minute. Let's -- let's
17 see what I have here. Let's do status first, Ms. Lateef.

18 MS. LATEEF: Thank you, Your Honor. Reema Lateef
19 on behalf of the Office of United States Trustee. The
20 Debtor is current on operating reports and owes \$250 in
21 quarterly fees. We do have proof of the opening of the
22 Debtor's (indiscernible) insurance. So, the Debtor is in
23 pretty good administrative shape. Thank you, Your Honor.

24 THE COURT: Okay. And insurance, you've got
25 insurance. Okay. Okay. And since the last status hearing

1 held on January 17th, the Debtor filed its demanded
2 disclosure statement and Chapter 11 plan dated February
3 14th. And again, I see that your motion was made, Ms.
4 Dartez. Okay. Yeah.

5 The other items on today is the Amended
6 Application to Employ Jacobs P.C. as bankruptcy counsel.
7 And that is on actually for a hearing today. What's the
8 position of the United States Trustee?

9 MS. LATEEF: Your Honor, Reema Lateef on behalf of
10 the Office of the United States Trustee. We have -- we
11 don't object. No position. Thank you, Your Honor.

12 THE COURT: Well, that's a position, not
13 objecting. One orally states on presentment, right or on
14 motion?

15 MS. LATEEF: Yes, Your Honor. Yes, but we have no
16 objection.

17 THE COURT: Okay. So, let's see what happens with
18 the case. Well, regardless -- give me a second. All right.
19 It's a motion for relief -- so regardless, the motion --
20 does anyone else oppose to the application for employ? All
21 right. The motion's granted. You can upload an order
22 because I don't have one. Okay. And now --

23 MS. LATEEF: Your Honor, Reema Lateef. Our office
24 will upload the order. Thank you.

25 THE COURT: Okay. Okay. All right. I have an

1 opposed motion by the secured creditor, Deutsche Bank
2 National Trust Company as trustees for the registered
3 holders of CBA Commercial Assets, Small Business -- Small
4 Balance Commercial Mortgage Pass-Through Certificates,
5 Series 2006-2. Current order granting interim relief --
6 well, granting the relief from stay and granting the non-
7 relief, but granting the non-relief with respect to the real
8 property owned by the Debtor at 361-G55 Cleveland Street,
9 also known as the 676 Liberty Avenue, Brooklyn, New York.
10 Pursuant to 362(g)(4), and also a vacatur of the order of
11 stay pursuant to (g)(1) and (g)(2), and a waiver of the 14 -
12 day stay, and whatever else is just and proper.

13 A position was filed by Debtor on February 14th,
14 the Movant replied -- filed a reply on February 17th.
15 Debtor filed a supplemental objection on the evening of
16 February 20.

17 Okay. So, a commercial property. There was one
18 prior filing in 2019 which the case hung around for a long
19 time and it was dismissed by stipulation February 6th, 2021.
20 So, again, it's the position of the -- Deutsche that they
21 lack adequate protection and alternatively that there's a
22 lack of equity and the property is not necessary for
23 effective reorganization. And then their position is also
24 that the actions taken on the transfer to the corporate
25 entity, again, with the two filings and the timing of those

1 two filings gives me grounds on just case law and -- for --
2 in the statute -- language of the statute that's interpreted
3 by the law for (indiscernible). Debtors opposed the motion
4 on the grounds that Deutsche Bank's interest in the property
5 is adequate to protect it from delineation in value on
6 account of normal occupational wear and tear of the
7 property. And two, if the property's value is diminishing
8 on account of normal wear and tear, the Debtor proposes that
9 it makes adequate protection here in the amount of
10 (indiscernible) diminution. Deutsche failed to make a prima
11 facie case to modify the automatic stay. And they say
12 relying on (g) (2) through (g) (4), and the property is
13 necessary for an effective reorganization.

14 First Debtor states the (indiscernible) alleges
15 the interest in the property is not adequately protected
16 because the property is subject to normal occupational wear
17 and tear. Debtor asserts the movement must show how the
18 value of the already worn-out property is decreasing.
19 Debtor's appraisal of the property dated February 7th, 2023
20 reflects that "in the current state, extensive repairs and
21 renovations must be done in order to actualize the property
22 value". Debtor asserts that the movement fails for evidence
23 that normal occupational wear and tear further diminishes
24 the property's value, and the property requires major
25 remodeling, and cites a 1999 case. There in the -- and the

1 tenant -- subsequent tenants (indiscernible) remodeled the
2 property.

3 And then second, the Debtor argues that
4 (indiscernible) interest in the property is found not to be
5 adequately protected, then the stay should be continued on
6 the condition of Debtor making adequate protection payments
7 on account of occupational wear and tear. The legal fee
8 amounts to be determined by the Court.

9 Third, the Debtor argues that moving the sale to
10 establish that Debtor has no equity in the property. And
11 I -- again, Debtor asserts that under New York law, a
12 mortgage is a mortgage, and a lien against property which
13 entitles the lienholder to an equitable remedy of
14 foreclosure. Debtor asserts in the instant case, Movant is
15 not (indiscernible) the Debtor, only holds the lien against
16 the Debtor's property. Therefore, Movant's only claim in
17 the bankruptcy is its right to payment through an equitable
18 remedy of foreclosure of Debtor's property, which is very
19 novel. The Movant's claim is limited to the amount of
20 proceeds a foreclosure sale would produce. Debtor argues
21 Movant has not proven that the payment it would receive for
22 a foreclosure sale equals, "the most commercially reasonable
23 disposition of the property," the proper measure of
24 determining whether Debtor has equity in the property. And
25 it's citing (indiscernible), it's a Southern District case.

1 An Eastern District case -- through its plan then, intends
2 to sell the property through a bankruptcy sale which would
3 yield a greater return than a foreclosure sale.

4 Four, Debtor argues the property's not necessary
5 for the effective reorganization -- I'm sorry. Debtor
6 argues property is necessary for effective reorganization
7 because the Debtor's proposed plan has a realistic chance of
8 being confirmed and the Debtor lacks -- lack of privity with
9 the Movant is no option for confirming the plan, and that
10 there's nothing in 1123 says (indiscernible) Debtor's
11 required to sell the property on the Debtor being in privity
12 with the lienholder. And then the Debtor argues against the
13 In (indiscernible) relief because it says -- (indiscernible)
14 that the Debtor's act was part of the scheme to delay,
15 hinder, or defraud creditors.

16 Lastly, Debtor seeks to have sanctions imposed
17 upon Movant, and Debtor's attorney's fees for defending
18 against the motion reimbursed because (indiscernible) motion
19 is not calibrated to any real sense of whether it's entitled
20 to relief based on the tests.

21 So, let me see if I understand. If I -- first of
22 all, so there -- I'm going to just take a look. So, you've
23 got real estate taxes, taxes on -- small tax on compliance,
24 there's Water Board, the mortgage, some IRS, that's not so
25 big, and Con Ed. So basically, you're talking about -- as

1 far as IRS would be priority, as the city would be a lien,
2 Water Board's a lien. You've got basically a \$619 unsecured
3 claim that would fall here.

4 So, do I understand the argument to be -- I guess
5 I'll, you know, I'll go over the other reply and stuff. But
6 is the -- is the Debtor -- if the prior owner transfers the
7 property to another entity, in this case the corporation,
8 without the consent of the lender, so it's an -- it's not a
9 proper transfer; and therefore, there's no privity -- that
10 therefore, in the corporate bankruptcy case, they're now a
11 non-recourse and they don't have a deficiency claim. In
12 other words, normally in a case like this, Debtor could not
13 ever prove up that the plan is necessary for effective
14 reorganization because that requires you to have a
15 confirmable plan -- or likely a confirmable plan.

16 If you have -- is this the case where the Debtor
17 said that the property's, like, worth \$600,000 or something
18 because it's in such terrible shape. Is this -- is this the
19 case, Mr. Weissberg, or the Debtor or whatever? I mean, if
20 it's worth that little in a normal case, then the -- the
21 bank would have the huge deficiency claim, certainly would
22 control the class of unsecured creditors. And the \$613 Con
23 Ed claim would be inconsequential, and there's no -- and
24 there's no other unsecured creditors that I see. And even
25 if there were, you'd still have -- okay.

1 So, you could never -- if you have lack of equity
2 and you have the property, not necessarily (indiscernible) -
3 - because what happens (indiscernible) cases where the
4 property is under water and a deal can't be made. Right?
5 That motion gets granted. Unless, again, unless you have a
6 deal to sell it in the bankruptcy. But that motion gets
7 granted because creditor says I'm not going to -- I'm going
8 to vote no. So you don't have an impaired class accepting
9 the claim.

10 So, are you telling me, either one of you, that
11 the company could improperly transfer the property without
12 the consent of the secured creditors -- and again, I
13 remodify loans, and we do things with those type of
14 situations. But are you telling me that because it's now
15 not in privity that creditor -- that the unsecured portion
16 of that creditor's claim can -- doesn't occupied the
17 unsecured class, and that the only right that that creditor
18 has is the right to foreclose, and as long as the property
19 is not deteriorating -- and here -- I don't know if you're
20 saying no (indiscernible), but I'll get to that in a minute
21 -- that that -- that somebody could do that and get around
22 the requirements of the stay motion in the Chapter 11. Is
23 somebody arguing that or am I missing the point?

24 MS. DARTEZ: Yes, Your Honor. What we're saying
25 is that to relieve the claim of the bank, the creditor is

1 equal to its foreclosure value. So, they're not under
2 water. The claim is equivalent to what they could foreclose
3 on.

4 THE COURT: Then you're refusing to recognize that
5 they have a deficiency claim in this bankruptcy because of
6 the transfer?

7 MS. DARTEZ: Not refusing to recognize that there
8 is no deficiency claim, so.

9 THE COURT: Yes. That would refusing to recognize
10 a deficiency claim. And there's no deficiency claim because
11 of an improper transfer by the Debtor -- I mean, prior
12 transferee to the -- transferring to the Debtor.

13 MS. DARTEZ: Lack of privity, yes.

14 THE COURT: Now, I -- yeah, I understand that.
15 But lack of privity by an action that was unauthorized and
16 not authorized by the mortgage. Correct?

17 MS. DARTEZ: The transfer, I believe, was done by
18 a foreclosure sale, I believe.

19 MR. WEISSBERG: Aaron Weissberg, that's incorrect.
20 The -- after we commenced the foreclosure action, 10 months
21 after the foreclosure action was commenced, the Debtor
22 transferred it by deed without our permission to this
23 entity. That was a fraudulent conveyance. It -- then the
24 Debtor, four months later, this Debtor, TLT filed for
25 bankruptcy. That was the first bankruptcy. That bankruptcy

1 was dismissed. Our lift stay motion was granted in that
2 bankruptcy; the bankruptcy was dismissed.

3 THE COURT: Well, it was dismissed by stipulation,
4 but -- according to my notes, but okay.

5 MR. WEISSBERG: And then the foreclosure action
6 continued, and we obtained the final judgment of foreclosure
7 and sale. And then we scheduled a foreclosure sale. And
8 then they filed their second bankruptcy, which is this
9 bankruptcy.

10 THE COURT: Correct. So, I'm going to reject that
11 argument. You know, I think that -- you know, for a whole
12 host of reasons including that you can't, you know, again,
13 bankruptcy, equity, clean hands, I don't think you can do an
14 improper transfer and then utilize the benefit of the
15 improper transfer where you took yourself -- you took
16 yourself out of privity with your lender to argue that in
17 the transferee bankruptcy, you don't have a deficiency claim
18 because you're not in privity by virtue of the fact -- of an
19 improper act. So, that's -- that's a no.

20 And if you get an appeals court to say that's not
21 right, I'd love to read the opinion. We respected the reply
22 by Deutsche. Let me see how much of this I got, but maybe
23 not. Movant argues then the argument's now positions are
24 illogical and frivolous. I mean, I got the logic. I might
25 agree with the frivolous part. And that the facts and

1 history demonstrate that the instant case is clearly that's
2 what hindered, delayed, and defrauded creditors in use of
3 the bankruptcy sale. That argument might be added to that
4 argument, by the way. But that's lack of an argument. But
5 okay. The total asking debt due and owing to Movant as of
6 10/5/22 was 1,876 million, 70.06 as reflected in the
7 worksheet attachment to the moving papers. Deutsche is the
8 owner and holder of the mortgage and underlying note. And
9 based on Movant's appraisal, the property is valued at 1.22
10 million. Movant asserts that there's clearly no equity,
11 whereas Movant is owing excess of 1.8 million.

12 So, is there argument on the lack of equity?
13 Everyone says there's a lack of equity, it's just a question
14 of how big a lack of equity. But in either case, since
15 there are no other secured creditors, the deficiency claim
16 would occupy that class. And so, therefore, you get to the
17 point that you couldn't confirm the plan because -- and let
18 me sure -- Mr. Weissberg, are you going to vote no on a
19 plan?

20 MR. WEISSBERG: I'm going to vote no, you know.
21 You're right, Your Honor. That's correct.

22 THE COURT: I approach, and the Debtor seeking to
23 sell the property, it's only asset, which is a liquidation
24 not a reorganization. But conceding the property's not
25 needed for an effective reorganization -- well, I -- you

1 know, I could see -- I -- because -- the question -- I guess
2 you're saying that there's no such thing as an effective
3 reorganization if you can't -- if you're going to a
4 liquidation. I don't know if the case law says that because
5 obviously liquidating plans are effective reorganization. I
6 get your point, though. But I -- and that's not what I'm
7 going with.

8 Moving on, this Debtor admits it's not a
9 functioning business, has no income, no employees, does not
10 operate, a corporate shell, entitled -- or holds title to
11 the real property. Oh, not entitled to -- that holds the
12 property, probably not entitled to hold property -- the
13 title. Again, as an investment, Debtor's corporation was
14 formed on July 9th, 2019. The date the deed was signed over
15 to the Debtor, clearly an effort to stop the foreclosure,
16 you know, and that's what most of these fraud cases look
17 like.

18 Movant argues Debtor has no realistic ability to
19 confirm a plan, Debtor's not in privity with Movant,
20 consequently Debtor's not able to apply for a loan mod.
21 Again, Debtor's a corporation. You're the one that, you
22 know, and again, they're not entitled to use the -- use the
23 (indiscernible) that I've got -- and the Court does.
24 Further Movant argues Debtor had no realistic ability to
25 confirm a plan prior to pay down nearly 2 million in debt

1 ultimately, (indiscernible) no employees, no assets, no
2 income. Movant asserts in its argument that Movant's
3 inability to the value of the property is both illusory and
4 illogical because the fee attachment up to the value of what
5 he owed of two of its loans to the extent the property is
6 worth less than what's owed, there is no equity, and nothing
7 left in the estate.

8 We'll note that first, the Debtor has not made any
9 adequate protection payments since he filed for bankruptcy
10 on June 22nd, 2022. The property continues to depreciate in
11 value by not being maintained. Their (indiscernible) has
12 the insurance paid for the expense of Movant, and Debtor has
13 not paid real estate taxes since acquiring ownership. I
14 assume they've gotten insurance because (indiscernible)
15 would not (indiscernible) with the U.S. Trustee. And Ms.
16 Lateef, you just reported you have proof of insurance.

17 MS. LATEEF: Your Honor, Reema Lateef on behalf of
18 the Office of the United States Trustees. I am working on
19 it and it's -- the insurance I see is a CGL property
20 insurance that expires on February 3rd, 2024. I will try
21 and pull up a copy of it. But from the page I'm looking at,
22 it does look like current insurance, Your Honor.

23 THE COURT: Obtained by the Debtor. Mr. Slavutin,
24 is that true?

25 MR. SLAVUTIN: Yes.

1 THE COURT: Okay. Yeah, no. So that -- so they
2 do have insurance. But they may not be paying real estate
3 taxes, and obviously that would -- that would deplete your -
4 - make your, you know, lack of equity even greater. All
5 right. So, that was the response. The Debtor's
6 supplemental objection filed last night argues that Deutsche
7 failed to establish they had standing to bring the
8 foreclosure action because it has not shown that Movant was
9 assigned a mortgage note secured by the property.
10 Specifically, Debtor argues CBA's (indiscernible) Funding,
11 LLC's (indiscernible) to Deutsche Bank assigned a note --
12 assigned a note that Pedro Rios executed a stay for CBA
13 through funding, but Deutsche did not produce this note or
14 show the special note is secured by a mortgage. Deutsche
15 Bank evidence was secured and not executed by Pedro Rios,
16 (indiscernible) private funding. We'll go back to this --
17 the stay status in a minute, standing in a minute.

18 But just so we're clear, again, if we're talking
19 about standing to bring a foreclosure action, that is not
20 for me to decide. That's an argument to made in the state
21 court. If it -- I don't know if it was or wasn't. But
22 that's not the business of this Court. If there's a final
23 judgment of foreclosure and sale, it's -- you know, it's res
24 judicata. Rooker-Feldman precludes me from doing anything
25 with it. And again, but again, that's not my issue.

1 I have an issue with to whether they have standing
2 to seek relief from stay. And we'll go through that in a
3 minute. Debtor argues that the mere fact that Deutsche Bank
4 allonge was attached to an allonge before the reassignment
5 of the Schooner note to CBAC is insufficient to establish
6 that Deutsche Bank allonged, which really assigned the
7 Schooner note, and not a note that Pedro Rios executed in
8 favor of CBAC allonge, states at the signing.

9 Give me a minute. Give me a minute. Let me go
10 back. And so, therefore, Debtor asserts Deutsche Bank has
11 failed to establish standing.

12 All right. When we looked at this motion for
13 relief, and we look at this issue in every motion for
14 relief, the documents appear to show proper standing. The
15 noted mortgage attached to the motion are executed by Pedro
16 Rios in favor of Schooner Private Funding Corp. The
17 mortgage was first assigned to (indiscernible), then
18 assigned to Deutsche as Trustee for the registered holder of
19 CBA Commercial Assets Small Balance Commercial Mortgage
20 Pass-through Certificate, Series 2006-2, which is our
21 current Movant. There were also two allonges to the note.
22 The first one is pay to the order of CBAC Funding LLC, drawn
23 by a commercial loan executive of Schooner, and the second
24 is endorsed in blank and signed by the executive vice
25 president of CBAC Funding.

1 Okay. Service of the motion for relief is timely,
2 proper, and again, we see attached -- we see all the
3 exhibits attached. And they signed it to remove, is the
4 next -- is Exhibit D. And next to Exhibit A there's a copy
5 of an allonge to the note which is endorsed in blank by
6 Movant's predecessor in interest, CBAC.

7 Mr. Weissberg, is your client in possession of the
8 note?

9 MR. WEISSBERG: Yes.

10 THE COURT: You're sure?

11 MR. WEISSBERG: Yes. My client -- the loan
12 servicer, PHH, acts as its agent and has evolved, and it's
13 maintained by the loan servicer. But that's acting on
14 behalf of the Deutsche --

15 THE COURT: Right. So they have -- they have the
16 note.

17 MR. WEISSBERG: They have the note.

18 THE COURT: Okay. You don't see a problem with
19 standing? I don't see a problem with standing. Again, I
20 could -- you take me up on appeal. I don't see a problem
21 with standing.

22 Everyone agrees there's a lack of equity. The
23 property is not necessary for an effective reorganization in
24 my view because, again, they can't confirm a plan over the
25 objection of Mr. Weissberg because there's a deficiency.

1 And they can't do an improper transfer to argue that there's
2 no privity and therefore not a deficiency claim.

3 And we have -- I mean, again, I am -- this was
4 tried before. Okay? And was it that relief from stay was
5 granted and then the case was stipulated to be dismissed by
6 the United States Trustee?

7 MR. WEISSBERG: Aaron Weissberg. That's correct.
8 That's my understanding.

9 THE COURT: Okay. This was tried before. Motion
10 for relief was granted, (indiscernible). Okay? Assuming
11 you're going to try it again, the way we try it again is to
12 walk into my court with an argument that we can sell for a
13 higher price. And again, it's not even close. If it's only
14 worth 600,000, whatever it is, you've got to sell it for a
15 much, much, much higher price. But the way you do that as
16 you walk in and you immediately -- you can file a claim or
17 not, but you immediately notice a sale. And that wasn't
18 done here.

19 Now, we're talking about, okay, we'll sell under
20 -- we'll sell with the plan. The Movant here hasn't seen a
21 payment since 2011 on the loan, and not since the bankruptcy
22 filed in June 2022, and there's no equity cushion. So,
23 there's no adequate protection. I don't think in good faith
24 you can walk in now and say, oh, motion for relief. It
25 looks like a winner; we'll give you adequate protection. I

1 don't believe you can do that.

2 I'll hear from everybody before I rule, and then
3 we'll talk about whether this should be in REM or not. Mr.
4 Weissberg first.

5 MR. WEISSBERG: Thank you, Your Honor. Your Honor
6 did an excellent job in covering kind of the background in
7 the motion papers. So I -- I'm -- I won't cover the grounds
8 that you've already covered. I'll just try to keep it brief
9 if that makes sense. So, we borrowed a (indiscernible) --
10 in October 2006, borrowed \$630,000 from Deutsche Bank's
11 predecessor through private funding. There was a note when
12 the mortgage signed, securing the real property. Then there
13 was loan modification after that in 2009 for the new
14 principal amount of \$649,041.

15 THE COURT: That was -- that loan mod was with Mr.
16 Rios?

17 MR. WEISSBERG: Yes. That's correct, Your Honor.

18 THE COURT: Thank you.

19 MR. WEISSBERG: And the note and the mortgage were
20 ultimately assigned to Deutsche Bank. And in August 1st,
21 2011 the Debtor had -- the borrower had failed -- defaulted
22 by failing to make payments. We have not received a payment
23 since August of the year 2011. They commenced on the
24 initial foreclosure in 2012, but that was dismissed, and we
25 recommenced the new foreclosure action in October 3rd, 2018.

1 Rios -- 10 months after that foreclosure action was
2 commenced, on July 9th, 2019 we were granted titled to the
3 Debtor by deed that was recorded July 16th, 2019. That
4 would be Exhibit F through the motion papers. And then four
5 months later on November 11th, 2019 the Debtor filed a
6 voluntary petition for the Chapter 11 bankruptcy in this
7 Court. On Deutsche Bank's motion, the Court granted the
8 order granting relief from the automatic stay on October
9 25th, 2020. And that's Exhibit H in the motion.

10 So thereafter, and it's in state court, the final
11 judgment of foreclosure and sale, dated January 28th, 2022
12 and entered February 7th, 2022 was entered, directing
13 Deutsche Bank to proceed with the scheduled foreclosure
14 sale. And the foreclosure sale was scheduled for June 23rd,
15 2022. A notice of sale was served and filed. And on the
16 eve of that foreclosure sale, June 22nd, 2022, TCN Liberty
17 Management filed for a Chapter 11 thereby staying the
18 foreclosure sale. And if we move forward, the Debtor in
19 this case only seeks to sell the property, which is his only
20 asset. It's only seeking to liquidate the property.

21 There's no -- the corporate entity has no
22 employees, no income. All the schedules and financing that
23 we filed with the bankruptcy court show it has no income, no
24 equity, no assets, and has no realistic ability to confirm a
25 plan of reorganization.

1 As Your Honor had already indicated, we would
2 absolutely object to any reorganization plan proposed by the
3 Debtor. We're owed \$1,876,007.06. Aa -- and according to
4 our estimate, the value of the property is \$1,220,000. So,
5 there's clearly no equity left in the property.

6 In the Debtor's application, they acknowledge that
7 there's no equity and their only intent is to try to sell
8 the property.

9 THE COURT: And again, I don't know for what
10 purpose. I mean, I'm just -- I mean, it's just totally lost
11 on me. Creditor -- I mean, I don't get it. That's -- you
12 know, again, it would be a sale for your benefit only. And
13 you don't want it. You don't want -- you don't want to --
14 you're saying, no thank you.

15 MR. WEISSBERG: Yes. That's exactly right, Your
16 Honor. And in any sale would yield no equity to the estate,
17 and so it makes no sense. It's illogical. The monthly
18 operating reports, and the Exhibit P and Q to our motion
19 papers, also documenting and show that the Debtor has no
20 employees, no income, no assets, nothing, And no effective
21 means of reorganizing. They don't intend, at all, to rent
22 and utilize the property. And based upon the history, which
23 is the (indiscernible) filing, and we should be granted
24 relief from stay as well as interim relief.

25 I would like to note that the papers that were

1 filed yesterday by the Debtor of -- ineffective service by -
2 - was without relief of court. It's not appropriate to make
3 a new arguments for the first time in a sur-reply. I
4 certainly didn't have an opportunity to address them, but
5 Your Honor did go through them. And then I will say that I
6 agree with everything that Your Honor has indicated. That
7 there is no -- the Debtor does not have the ability or the
8 right to challenge whether we have standing to sell the
9 property in foreclosure. We already have a judgment of
10 foreclosure and sale. That's a final judgment. Rooker-
11 Feldman --

12 THE COURT: Right. Well, Rooker-Feldman precludes
13 me from touching that issue.

14 MR. WEISSBERG: Yes, Your Honor. And based on the
15 timing, as far as the interim relief, based on the timing of
16 the transfer of the property from the borrower to the
17 Debtor, it was formed literally the day --

18 THE COURT: And I have all that.

19 MR. WEISSBERG: Okay.

20 THE COURT: You don't need to argue that. I know
21 you want to, you know, talk about the -- I mean, I'll --
22 that's okay. I've got -- I've got the time. Who wants to
23 speak on behalf of the Debtor? I've gotten more than one --
24 more than one box.

25 MS. DARTEZ: I'll start, Your Honor. Jennifer

1 Dartez on behalf of the Debtor. Your Honor, I'd first like
2 to go back to standing. I think the case rises and falls in
3 standing, which can be raised at any time. We filed an
4 objection to their proof of claim, Claim Number 3-1, for the
5 simple fact that they haven't evidenced in that proof of
6 claim that there is an investment of the mortgage note
7 underlying the Debtor assignment of the mortgage. They may
8 state that the -- Deutsche Bank may state that they're
9 servicers in possession, but I do not see it in the allonges
10 on the proof of claim. They don't have standing, not
11 necessarily for foreclosure but for this bankruptcy. And in
12 fact, (indiscernible) proof of claim.

13 THE COURT: Yeah, and foreclosure -- standing for
14 the foreclosure is done. Standing for the motion for relief
15 from stay, Mr. Weissberg, I take you on your word before I
16 enter relief. If you haven't put it in the -- if it's not
17 in your affidavit or an affidavit, file an affidavit,
18 indicating that your client or a servicer on your behalf has
19 possession of the note. And anyway -- again, it was -- it
20 was -- it was in blank, in any event. But -- so, it doesn't
21 trouble me. But I'll -- if you want that affidavit before I
22 enter the order, Mr. Weissberg, I'm sure we'll arrange for
23 it. Go ahead.

24 MS. DARTEZ: All right. Yes, Jennifer Dartez
25 again, Your Honor. We would never reiterate our point of

1 view that there is a -- there is not a lack of equity in the
2 property despite any allegations of improper transfer, that
3 their equity is equal to the amount of the foreclosure.
4 That is their amount in bankruptcy. And under a 363 sale,
5 they will -- which typically renders a higher value than in
6 a foreclosure sale, that there is equity in the property.

7 THE COURT: You can go from 600,000 to a 1.8
8 million? You think? Because boy, Ms. Dartez, if you do
9 that, I'll hire you to sell all my real estate.

10 MS. DARTEZ: And then, Your Honor, Jennifer Dartez
11 again. We would oppose any end-run relief in this case. We
12 don't think it's fair given the circumstances they're
13 proposing. But we believe that reorganization through the
14 sale would be valuable to the creditors at hand.

15 THE COURT: Okay. Well, maybe you should have --
16 somebody should have done that in the first bankruptcy right
17 away. Anybody else for the Debtor? No.

18 MR. SLAVUTIN: Nothing here, Your Honor.

19 MR. GREENWALD: Your Honor, Wayne Greenwald just
20 noting my appearance.

21 THE COURT: Oh, okay. We'll add you. From the
22 Debtor, right?

23 MR. GREENWALD: From the Debtor, yes, special
24 counsel -- counsel to --

25 THE COURT: Okay. I have a question if somebody

1 knows the answer. What was the relationship between Mr.
2 Rios and Mr. Boracoff? Anybody know?

3 MR. GREENWALD: I'm not aware -- (indiscernible),
4 for the Debtor. I'm unaware, Your Honor.

5 THE COURT: Mr. Boracoff is the principal of this
6 case, right?

7 MR. GREENWALD: Correct.

8 THE COURT: Okay. Not Mr. Rios?

9 MR. GREENWALD: Correct.

10 THE COURT: Okay. So, Mr. Rios plans for the
11 property to TCN Liberty and you don't know if he had an
12 involvement at the time of the transfer?

13 MR. GREENWALD: I don't, Your Honor.

14 THE COURT: Okay. But would he have transferred
15 it for -- what was the consideration? Anybody know? The
16 states consideration?

17 MR. GREENWALD: Your Honor, we --

18 MR. WEISSBERG: (indiscernible). I'm sorry, I
19 don't --

20 MR. GREENWALD: (indiscernible). I don't -- I
21 don't know.

22 THE COURT: Okay. Okay. Motion for relief from
23 stay is granted. The property lacks equity and is not
24 necessary for effectively reorganization by reason of the
25 records, that is what I said earlier because I could not --

1 could not confirm a plan over the objection of Mr.
2 Weissberg's client. With respect to a lack of adequate
3 protection, there's also a lack of adequate protection. In
4 addition to the fact that the property deteriorates, I think
5 (indiscernible). The -- and there hasn't been an adequate
6 protection payment made or any payment made in either of the
7 Chapter 11s and the offers due at the out was way too little
8 way too late. And there -- there is that.

9 With respect to standing, based upon the
10 attachments to the motion, we see that there is standing. I
11 don't even believe that based upon the fact that its
12 noticed, endorsed in blank that I need this, but just to put
13 a final, you know, touches on this thing, I'll ask Mr.
14 Weissberg to have a affidavit entered by the whoever is in
15 possession of the note. That could be the servicer.

16 MR. WEISSBERG: Aaron Weissberg, Your Honor. I
17 just notice the relief from stay worksheet on page 5, where
18 it says certification from the business records.

19 THE COURT: It adds it?

20 MR. WEISSBERG: It says, I further certify that
21 the Movant is in possession of the note.

22 THE COURT: Thank you. I didn't know -- I didn't
23 know if you'd filed that in this case, but that's fine.
24 Okay. Then there's no need for the affidavit. On its face,
25 there's no question. That's why we have that worksheet, and

1 that certification. Okay.

2 With respect to interim relief, here's what I've
3 got to say. I'll be with you in a second, I'm going to go
4 to Word, let's see. Sorry. Regarding interim relief,
5 here's the relevant time line. On October 12th, 2006 Pedro
6 Rios borrowed the sum of \$630,000 from (indiscernible)
7 private funding corp. and executed a mortgage
8 (indiscernible) for his property in the stated amount
9 registered in Kings County office on December 8th, 2006.
10 That mortgage was assigned to Movant as of October 12th,
11 2009, recording the same day. On October 21st, 2009, the
12 loan modified to consolidate the remaining unpaid principal
13 balance which made the principal in amount of 694 -- sorry,
14 \$649,041.07. Mr. Rios defaulted in the terms of the
15 mortgage with a payment due August 1st, 2011 and each month
16 thereafter.

17 (indiscernible) commenced the foreclosure action
18 on October 11th, 2012. The action was ultimately dismissed.
19 Don't know why, but irrelevant. Rios commenced the other
20 foreclosure action on October 3rd, 2018. On July 9th, 2019,
21 Rios granted title to the subject property to the Debtor. I
22 have the answer to my question, in consideration of \$10.
23 That that was the fee of consideration. On November 11th,
24 2019 Debtor filed his first Chapter 11 petition staying the
25 foreclosure action.

1 On October 25th, 2020, the Court entered an order
2 granting relief from stay motion for the first case;
3 obviously, because there was a basis to do it. The same
4 court issue a judgment of foreclosure and sale and that's
5 entered February 7th, 2022. Dated January 18th, 2022, was
6 directed to proceed with scheduling a public commercial
7 foreclosure auction and sale. A sale was scheduled for June
8 23rd, 2022 with notice of sale written, served, and filed
9 back on February 18th, 2022. On the evening of the sale,
10 June 22, 2022, TCN Liberty Management filed the current
11 Chapter 11 Bankruptcy petition staying the sale.

12 Then we found Mr. Rios first transferred the
13 property to the Debtor about nine months after the second
14 foreclosure action commenced, and then Debtor filed again,
15 (indiscernible). And then Debtor filed its first petition
16 about four months after the property was transferred to it
17 for little to no consideration.

18 The first bankruptcy stayed the pending
19 foreclosure action after this Court allowed the parties to
20 return to state court, Movant got his judgment for closure
21 and sale. Proceeds to go to sale, but the sale was stayed
22 by the current petition.

23 So, there are two bankruptcies affecting the real
24 property. And there was a transfer of the property without
25 the consent of the secured creditors, the (indiscernible)

1 for little or no consideration. Additionally, both
2 petitions were filed bare bones and all positions were
3 corrected each after the filing which indicates that the
4 timing of filing was contingent.

5 Generally, two filings by themselves are not a
6 basis for my granting interim relief. But I do not believe
7 that's true here. Here, I believe interim relief is
8 appropriate. I have to do something to keep somebody from
9 doing this again because I think they will. I issued the
10 stay once. I've now (indiscernible) the stay twice. And
11 nothing is going to magically change the facts of the case.
12 If you pair the two filings with the transfer of the
13 property, you've got the basis for interim relief.
14 362(d)(4) provides that with respect to a stay and acts
15 against real property under the subsection A, by a creditor
16 whose claim's secured by an interest in real property.

17 The Court finds that the filing of the petition is
18 part of scheme to delay, hinder, or defraud creditors that
19 involve either A, transfer all or part ownership of, or
20 other interest in such property without the consent of the
21 secured creditor or court approval, or multiple bankruptcy
22 filings (indiscernible) the real property. 11 U.S.C.
23 352(b)(4).

24 I have both here. In order to establish its
25 entitled to relief pursuant to 352(c)(4)(B), the secured

1 creditor has the burden of establishing at the time of
2 bankruptcy filing as part of the scheme to hinder, delay,
3 and defraud the bank. In re Lemma, 394 B.R. 315-324 (Bankr.
4 E.D.N.Y. 2008).

5 The fact that the Debtor has filed multiple
6 bankruptcy cases in and of itself is not sufficient cause
7 for relief under this section. See In re Lemma, 394 B.R.
8 315-324. However, an attempt to hinder, delay, and defraud
9 can be inferred from the following multiple of bankruptcies
10 when the filings are deficient, strategically timed or
11 otherwise indicate bad faith. In re Montalvo, 416 B.R. 381
12 (Bankr. E.D.N.Y. 2009), finding six strategically timed
13 deficient bankruptcy filings were sufficient to find that
14 the sixth bankruptcy was part of a scheme to hinder, delay,
15 or defraud and interim was appropriate.

16 Okay. And then in In Re Richmond, 513 B.R. 34-38
17 (Bankr. E.D.N.Y. 2014), finding that two bankruptcy filings
18 on the eve of scheduled foreclosure sales means the Debtor
19 was repeatedly attempting to collaterally attack the
20 foreclosure judgment in the property not part of debtor's
21 estate provided sufficient cause to grant interim relief.

22 Now, with everything I said before and I will tell
23 you that I think that the arguments made here, I have enough
24 without that. But I think the arguments made here show,
25 again, they may be creative, but they're totally frivolous.

1 That this thing should be (indiscernible) by a bankruptcy
2 court with this kind of a lack of equity, and the idea that
3 the -- an improper action to cause the creditor did not have
4 privity or did not have a deficiency claim -- again, I'm not
5 even going you give you an A for creativity. But I will
6 tell you that that convinces me that if I don't give interim
7 relief this Debtor is going to be back. This Debtor should
8 never have come back this time. And if this Debtor did come
9 back this time, in its very, very first motion could have
10 been a first-day order, should have been a motion to sell.
11 Because Judge, you know, you're going to get more. But
12 again, it's not even close. We're good here, we're not that
13 good.

14 So, I don't even believe that -- and who would it
15 even have benefited for? I don't know. It was -- again,
16 there was such a -- this property is so under water, there's
17 no point. It's futile. So, I'll, you know, maybe I'm doing
18 everybody a favor here including the Debtor or the Debtor's
19 principal. But again, not every investment works out. This
20 one didn't work out.

21 Motion for relief from stay granted, interim
22 relief granted. Mr. Weissberg, upload an order. I don't --
23 I don't waive the 14-day stay. So, there's no waiver and no
24 fees. So, you won that, Ms. Dartez, no waiver, no fees.
25 And you can upload an order.

1 Again, now, with respect to whether you want to
2 stipulate to dismiss, or U.S. Trustee makes a motion to
3 dismiss, I'll just -- I'll give you an adjourn date for
4 that. And that is -- so on the record, the order.

5 CLERK: Judge, there is a claims objection motion
6 on March 28th at 11:00 on TCN. Did we want to use that
7 date?

8 THE COURT: What claim are they objecting to?
9 This one?

10 THE CLERK: I believe so.

11 MR. WEISSBERG: Yes, Your Honor.

12 THE COURT: So you're going to be -- it's going to
13 be moot. But what's the date?

14 CLERK: March 28th at 11:00.

15 THE COURT: Okay. All right. Thank you. All
16 right. Now, let's go call the other case.

17 (Whereupon these proceedings were concluded at
18 12:18 PM)

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I N D E X**RULINGS**

	Page	Line
Motion for relief granted	35	21
Motion for interim relief granted	35	22

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde".

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: March 1, 2023

&	18 2:11 3:12	21 1:15 37:5	5
& 3:3 5:17	188 2:1	21st 31:11	5 30:17
1	18th 32:5,9	22 32:10 37:6	513 34:16
1 8:11 38:25	1999 9:25	22-41452 1:3	555 3:5
1,220,000 25:4	1st 23:20 31:15	22nd 18:10	595 4:3
1,876 16:6	2	24:16	6
1,876,007.06.	2 8:11 9:12	23rd 24:14	600,000 12:17
25:3	17:25	32:8	22:14 28:7
1.22 16:9	20 8:16	250 6:20	613 12:22
1.8 16:11 28:7	2006 23:10	25th 24:9 32:1	619 12:2
10 6:3 14:20	31:5,9	271 1:12	630,000 23:10
24:1 31:22	2006-2 2:5 8:5	28th 24:11	31:6
10/5/22 16:6	20:20	36:6,14	649,041 23:14
10014 3:21	2008 34:4	3	649,041.07.
10016 3:13	2009 23:13	3-1 27:4	31:14
10022 4:4	31:11,11 34:12	300 38:22	676 8:9
10580 3:6	201 3:20	315-324 34:3,8	694 31:13
11 7:2 13:22	2011 22:21	330 38:21	6th 8:19
24:6,17 31:24	23:21,23 31:15	34-38 34:16	7
32:11 33:22	2012 23:24	35 2:7 37:5,6	70.06 16:6
11201 1:13	31:18	352 33:23,25	7th 9:19 24:12
1123 11:10	2014 34:17	361 8:8	32:5
11501 38:23	2018 23:25	362 8:10 33:14	8
11:00 1:16 36:6	31:20	363 28:4	8th 31:9
36:14	2019 8:18	381 34:11	9
11s 30:7	17:14 24:2,3,5	394 34:3,7	9th 17:14 24:2
11th 24:5	31:20,24	39th 4:3	31:20
31:18,23	2020 24:9 32:1	3rd 18:20	a
12151 38:6	2021 8:19	23:25 31:20	a300 3:5
12:18 36:18	2022 18:10	4	aa 25:3
12th 31:5,10	22:22 24:11,12	4 8:10 9:12	aaron 3:8 4:7
14 8:11 35:23	24:15,16 32:5	33:14,23,25	5:9,16 14:19
14th 7:3 8:13	32:5,8,9,10	40 2:1	22:7 30:16
16th 24:3	2023 1:15 9:19	416 34:11	ability 17:18
17th 7:1 8:14	38:25	475 3:12	17:24 24:24
	2024 18:20		

26:7 able 17:20 absolutely 25:2 accepting 13:8 account 9:6,8 10:7 accurate 38:4 acknowledge 25:6 acquiring 18:13 act 11:14 15:19 acting 21:13 action 14:15,20 14:21 15:5 19:8,19 23:25 24:1 31:17,18 31:20,25 32:14 32:19 35:3 actions 8:24 acts 21:12 33:14 actualize 9:21 actually 7:7 add 28:21 added 16:3 addition 30:4 additionally 33:1 address 26:4 adds 30:19 adequate 8:21 9:5,9 10:6 18:9 22:23,25 30:2 30:3,5 adequately 9:15 10:5	adjourn 36:3 administrative 6:23 admits 17:8 admitted 5:24 affecting 32:23 affidavit 27:17 27:17,17,21 30:14,24 agent 21:12 agree 15:25 26:6 agreement 5:11 agrees 21:22 ahead 27:23 allegations 28:2 alleges 9:14 allonge 20:4,4 20:8 21:5 allonged 20:6 allonges 20:21 27:9 allowed 32:19 alternatively 8:21 amended 2:7 7:5 amount 2:1 9:9 10:19 23:14 28:3,4 31:8,13 amounts 10:8 answer 29:1 31:22 anybody 28:17 29:2,15	anyway 6:6 27:19 appeal 21:20 appeals 15:20 appear 5:19,21 20:14 appearance 28:20 appearances 5:8 application 2:7 7:6,20 25:6 apply 17:20 appraisal 9:19 16:9 approach 16:22 appropriate 26:2 33:8 34:15 approval 33:21 argue 15:16 22:1 26:20 argues 10:3,9 10:20 11:4,6 11:12 15:23 17:18,24 19:6 19:10 20:3 arguing 13:23 argument 12:4 15:11 16:3,4,4 16:12 18:2 19:20 22:12 argument's 15:23 arguments 26:3 34:23,24	arrange 27:22 asking 16:5 asserts 9:17,22 10:11,14 16:10 18:2 20:10 asset 16:23 24:20 assets 2:4 8:3 18:1 20:19 24:24 25:20 assigned 19:9 19:11,12 20:6 20:17,18 23:20 31:10 assignment 27:7 assume 18:14 assuming 22:10 attached 20:4 20:15 21:2,3 attachment 16:7 18:4 attachments 30:10 attack 34:19 attempt 34:8 attempting 34:19 attorney 5:11 attorney's 11:17 attorneys 3:4 3:11,18 4:2 auction 32:7 august 23:20 23:23 31:15
---	--	---	--

authorized 14:16 automatic 9:11 24:8 avenue 3:5,12 4:3 8:9 aware 29:3	15:2,2,8,9,13 15:17 16:3 18:9 22:21 24:6,23 27:11 28:4,16 32:11 32:18 33:21 34:2,6,13,14 34:17 35:1	board 11:24 board's 12:2 bones 33:2 boracoff 29:2,5 borrowed 23:9 23:10 31:6 borrower 23:21 26:16 box 6:9 26:24 boy 28:8 brief 23:8 bring 19:7,19 brooklyn 1:13 8:9 building 3:19 burden 34:1 business 8:3 17:9 19:22 30:18	cases 5:2 13:3 17:16 34:6 cause 34:6,21 35:3 cba 2:4 8:3 19:12 20:19 cba's 19:10 cbac 20:5,8,22 20:25 21:6 certainly 12:21 26:4 certificate 20:20 certificates 2:5 8:4 certification 30:18 31:1 certified 38:3 certify 30:20 cgl 18:19 challenge 26:8 chance 11:7 change 33:11 chapter 7:2 13:22 24:6,17 30:7 31:24 32:11 circumstances 28:12 cites 9:25 citing 10:25 city 12:1 claim 10:16,19 12:3,11,21,23 13:9,16,25 14:2,5,8,10,10 15:17 16:15
b	bare 33:2 based 11:20 16:9 25:22 26:14,15 30:9 30:11 basically 11:25 12:2 basis 32:3 33:6 33:13 battle 6:15 behalf 2:2,8 5:10,14,17 6:19 7:9 18:17 21:14 26:23 27:1,18 believe 14:17 14:18 23:1 28:13 30:11 33:6,7 35:14 36:10 benefit 15:14 25:12 benefited 35:15 big 11:25 16:14 blank 20:24 21:5 27:20 30:12	c c 1:12 3:1 5:1 33:25 38:1,1 cadman 1:12 calibrated 11:19 call 5:4 36:16 case 1:3 7:18 8:18 9:1,11,25 10:14,25 11:1 12:7,10,12,16 12:19,20 16:1 16:14 17:4 22:5 24:19 27:2 28:11 29:6 30:23 32:2 33:11 36:16	

22:2,16 27:4,4 27:6,10,12 35:4 36:8 claim's 33:16 claims 36:5 class 12:22 13:8,17 16:16 clean 15:13 clear 19:18 clearly 16:1,10 17:15 25:5 clerk 5:2,6 36:5,10,14 cleveland 8:8 client 21:7,11 27:18 30:2 close 22:13 35:12 closure 32:20 collaterally 34:19 come 35:8,8 coming 6:11 commenced 14:20,21 23:23 24:2 31:17,19 32:14 commercial 2:4,4 8:3,4,17 20:19,19,23 32:6 commercially 10:22 company 2:3 8:2 13:11 compliance 11:23	con 11:25 12:22 conceding 16:24 concluded 36:17 condition 10:6 conference 2:11 confirm 16:17 17:19,25 21:24 24:24 30:1 confirmable 12:15,15 confirmed 11:8 confirming 11:9 consent 12:8 13:12 32:25 33:20 consequently 17:20 consideration 29:15,16 31:22 31:23 32:17 33:1 consolidate 31:12 contingent 33:4 continued 10:5 15:6 continues 18:10 control 12:22 conveyance 14:23	convinces 35:6 copy 18:21 21:4 corp 20:16 31:7 corporate 8:24 12:10 17:10 24:21 corporation 12:7 17:13,21 correct 14:16 15:10 16:21 22:7 23:17 29:7,9 corrected 33:3 counsel 2:8 7:6 28:24,24 country 38:21 county 31:9 court 1:1,11 5:4,8,12,23 6:1 6:4,6,11,14,24 7:12,17,25 10:8 14:4,9,14 15:3,10,20 16:22 17:23 18:23 19:1,21 19:22 21:10,15 21:18 22:9,12 23:15,18 24:7 24:7,10,23 25:9 26:2,12 26:18,20 27:13 28:7,15,21,25 29:5,8,10,14 29:22 30:19,22 32:1,4,19,20	33:17,21 35:2 36:8,12,15 cover 23:7 covered 23:8 covering 23:6 creative 34:25 creativity 35:5 creditor 8:1 13:7,15,17,25 25:11 33:15,21 34:1 35:3 creditor's 13:16 creditors 11:15 12:22,24 13:12 16:2,15 28:14 32:25 33:18 current 6:20 8:5 9:20 18:22 20:21 32:10,22 currently 5:23 cushion 22:22
			d
			d 5:1 21:4 33:14 37:1 d.c. 5:25 dartz 4:6 5:18 5:18,25 6:2,5 6:10,13 7:4 13:24 14:7,13 14:17 26:25 27:1,24,24 28:8,10,10 35:24 date 17:14 36:3 36:7,13 38:25

dated 7:2 9:19 24:11 32:5 day 8:12 26:17 31:11 35:10,23 deal 13:4,6 debt 16:5 17:25 debtor 1:9 3:11 4:2 5:10,20 6:13,20,22 7:1 8:8,13,15 9:8 9:14,17,22 10:3,6,9,10,11 10:14,15,20,24 11:4,5,8,11,12 11:16 12:6,12 12:16,19 14:11 14:12,21,24,24 16:22 17:8,15 17:18,24 18:8 18:12,23 19:10 20:3,10 23:21 24:3,5,18 25:3 25:19 26:1,7 26:17,23 27:1 27:7 28:17,22 28:23 29:4 31:21,24 32:13 32:14,15 34:5 34:18 35:7,7,8 35:18 debtor's 6:22 9:19 10:16,18 11:7,10,14,17 17:13,19,20,21 19:5 25:6 34:20 35:18	debtors 2:8 9:3 december 31:9 decide 19:20 decreasing 9:18 deed 14:22 17:14 24:3 defaulted 23:21 31:14 defending 11:17 deficiency 12:11,21 14:5 14:8,10,10 15:17 16:15 21:25 22:2 35:4 deficient 34:10 34:13 defraud 11:15 33:18 34:3,8 34:15 defrauded 16:2 delay 11:14 33:18 34:2,8 34:14 delayed 16:2 delineation 9:5 demanded 7:1 demonstrate 16:1 deplete 19:3 depreciate 18:10 despite 28:2 deteriorates 30:4	deteriorating 13:19 determined 10:8 determining 10:24 deutsche 2:2 5:17 8:1,20 9:4 9:10 15:22 16:7 19:6,11 19:13,14 20:3 20:6,10,18 21:14 23:10,20 24:7,13 27:8 diminishes 9:23 diminishing 9:7 diminution 9:10 directed 32:6 directing 24:12 disclosure 7:2 dismiss 36:2,3 dismissed 8:19 15:1,2,3 22:5 23:24 31:18 disposition 10:23 district 1:2 10:25 11:1 districts 6:2 documenting 25:19 documents 20:14	doing 6:2 19:24 33:9 35:17 dorf 3:3 5:17 drawn 20:22 due 16:5 30:7 31:15 e e 1:21,21 3:1,1 5:1,1 37:1 38:1 e.d.n.y. 34:4,12 34:17 earlier 29:25 east 1:12 eastern 1:2 11:1 easy 6:14 ecro 1:25 ed 11:25 12:23 effective 8:23 9:13 11:5,6 12:13 16:25 17:2,5 21:23 25:20 effectively 29:24 effort 17:15 either 13:10 16:14 30:6 33:19 employ 2:7 7:6 7:20 employees 17:9 18:1 25:20 employes 24:22
---	---	--	--

endorsed 20:24 21:5 30:12 enter 6:8 27:16 27:22 entered 5:22 24:12,12 30:14 32:1,5 entitled 11:19 17:10,11,12,22 33:25 entitles 10:13 entity 8:25 12:7 14:23 24:21 equal 14:1 28:3 equals 10:22 equitable 10:13,17 equity 8:22 10:10,24 13:1 15:13 16:10,12 16:13,14 18:6 19:4 21:22 22:22 24:24 25:5,7,16 28:1 28:3,6 29:23 35:2 equivalent 14:2 establish 10:10 19:7 20:5,11 33:24 establishing 34:1 estate 11:23 18:7,13 19:2 25:16 28:9	34:21 estimate 25:4 eve 24:16 34:18 evening 8:15 32:9 event 27:20 everybody 23:2 35:18 evidence 9:22 19:15 evidenced 27:5 evolved 21:12 exactly 25:15 excellent 23:6 excess 16:11 executed 19:12 19:15 20:7,15 31:7 executive 20:23,24 exhibit 21:4,4 24:4,9 25:18 exhibits 21:3 expense 18:12 expires 18:20 extensive 9:20 extent 18:5 f f 1:21 24:4 38:1 face 30:24 facie 9:11 fact 15:18 20:3 27:5,12 30:4 30:11 34:5 facts 15:25 33:11	failed 9:10 19:7 20:11 23:21 failing 23:22 fails 9:22 fair 28:12 faith 22:23 34:11 fall 12:3 falls 27:2 far 12:1 26:15 favor 20:8,16 35:18 february 1:15 7:2 8:13,14,16 8:19 9:19 18:20 24:12 32:5,9 federal 3:19 fee 2:1 10:7 18:4 31:23 fees 6:21 11:17 35:24,24 feldman 19:24 26:11,12 file 22:16 27:17 filed 2:2,8 5:19 7:1 8:13,14,15 14:24 15:8 18:9 19:6 22:22 24:5,15 24:17,23 26:1 27:3 30:23 31:24 32:8,10 32:14,15 33:2 34:5	filing 8:18 25:23 33:3,4 33:17 34:2 filings 8:25 9:1 33:5,12,22 34:10,13,17 final 15:6 19:22 24:10 26:10 30:13 financing 24:22 find 34:13 finding 34:12 34:17 finds 33:17 fine 30:23 first 6:17 9:14 11:21 14:25 18:8 20:17,22 23:4 26:3 27:1 28:16 31:24 32:2,12,15,18 35:9,10 floor 3:12 4:3 following 34:9 foreclose 13:18 14:2 foreclosure 10:14,18,20,22 11:3 14:1,18 14:20,21 15:5 15:6,7 17:15 19:8,19,23 23:24,25 24:1 24:11,13,14,16 24:18 26:9,10 27:11,13,14
---	---	--	--

28:3,6 31:17 31:20,25 32:4 32:7,14,19 34:18,20 foregoing 38:3 formed 17:14 26:17 forward 24:18 found 10:4 32:12 four 11:4 14:24 24:4 32:16 fraud 17:16 fraudulent 14:23 fremd 3:5 frivolous 15:24 15:25 34:25 functioning 17:9 funding 19:10 19:13,16 20:16 20:22,25 23:11 31:7 further 9:23 17:24 30:20 futile 35:17	gives 9:1 go 5:12 12:5 19:16 20:2,9 26:5 27:2,23 28:7 31:3 32:21 36:16 going 11:22 13:7,7 15:10 16:18,20 17:3 17:7 22:11 31:3 33:11 35:5,7,11 36:12,12 good 5:13,16 6:1,23 22:23 35:12,13 gotten 18:14 26:23 grant 34:21 granted 6:8 7:21 13:5,7 15:1 22:5,10 24:2,7 25:23 29:23 31:21 35:21,22 37:5 37:6 granting 8:5,6 8:6,7 24:8 32:2 33:6 greater 11:3 19:4 greenwald 3:10,15 28:19 28:19,23 29:3 29:7,9,13,17 29:20	grounds 9:1,4 23:7 guess 12:4 17:1 h h 24:9 hac 5:19 6:7 hand 28:14 hands 15:13 hang 6:16 happens 7:17 13:3 harold 5:4 hear 23:2 hearing 2:1,7 2:11 5:21 6:25 7:7 held 7:1 hershey 1:22 higher 22:13 22:15 28:5 hinder 11:15 33:18 34:2,8 34:14 hindered 16:2 hire 28:9 history 16:1 25:22 hold 17:12 holder 16:8 20:18 holders 2:4 8:3 holds 10:15 17:10,11 hon 1:22 honor 5:9,13 5:14,16,18 6:10,18,23 7:9	7:11,15,23 13:24 16:21 18:17,22 23:5 23:5,17 25:1 25:16 26:5,6 26:14,25 27:1 27:25 28:10,18 28:19 29:4,13 29:17 30:16 36:11 host 15:12 huge 12:21 hung 8:18 hyde 2:25 38:3 38:8 i idea 35:2 ilevu 2:8 illogical 15:24 18:4 25:17 illusory 18:3 immediately 22:16,17 impaired 13:8 imposed 11:16 improper 14:11 15:14,15 15:19 22:1 28:2 35:3 improperly 13:11 inability 18:3 including 15:12 35:18 income 17:9 18:2 24:22,23 25:20
g			
g 5:1 8:10,11 8:11 9:12,12 g55 8:8 generally 33:5 give 7:18 20:9 20:9 22:25 35:5,6 36:3 given 28:12			

[inconsequential - liquidation]

Page 8

inconsequent... 12:23 incorrect 14:19 indicate 34:11 indicated 25:1 26:6 indicates 33:3 indicating 27:18 indiscernible 5:11 6:22 9:3 9:10,14 10:1,4 10:15,25 11:10 11:13,13,18 13:2,3,20 17:23 18:1,11 18:14,15 19:10 19:11,16 20:17 22:10 23:9 25:23 27:12 29:3,18,20 30:5 31:6,8,17 32:15,25 33:10 33:22 35:1 ineffective 26:1 inferred 34:9 initial 23:24 instant 10:14 16:1 insufficient 20:5 insurance 6:22 6:24,25 18:12 18:14,16,19,20 18:22 19:2 intend 25:21	intends 11:1 intent 25:7 interest 9:4,15 10:4 21:6 33:16,20 interim 8:5 25:24 26:15 31:2,4 33:6,7 33:13 34:15,21 35:6,21 37:6 interpreted 9:2 investment 17:13 27:6 35:19 involve 33:19 involvement 29:12 irrelevant 31:19 irs 11:24 12:1 issue 19:25 20:1,13 26:13 32:4 issued 33:9 items 7:5	jonathan 2:2 judge 1:23 35:11 36:5 judgment 15:6 19:23 24:11 26:9,10 32:4 32:20 34:20 judicata 19:24 july 17:14 24:2 24:3 31:20 june 18:10 22:22 24:14,16 32:7,10	35:2 lacks 11:8 29:23 language 9:2 lastly 11:16 late 30:8 lateef 3:23 5:13 5:14 6:17,18 6:18 7:9,9,15 7:23,23 18:16 18:17,17 law 3:10 9:1,3 10:11 17:4 ledanski 2:25 38:3,8 left 18:7 25:5 legal 10:7 38:20 lemma 34:3,7 lender 12:8 15:16 liberty 1:7 2:9 5:3,6 8:9 24:16 29:11 32:10 lien 10:12,15 12:1,2 lienholder 10:13 11:12 lift 5:21 15:1 likely 12:15 limited 10:19 line 31:5 37:4 liquidate 24:20 liquidating 17:5 liquidation 16:23 17:4
		k	
		keep 23:8 33:8 kind 23:6 35:2 kings 31:9 know 12:5 13:19 15:11,11 15:12 16:20 17:1,4,16,22 19:4,21,23 25:9,12 26:20 26:21 29:2,11 29:15,21 30:13 30:22,23 31:19 35:11,15,17 known 8:9 knows 29:1	
		l	
		lack 8:21,22 11:8 13:1 14:13,15 16:4 16:12,13,14 19:4 21:22 28:1 30:2,3	
	j		
	jacobs 2:7 4:1 5:10,20 6:13 7:6 january 7:1 24:11 32:5 jealous 6:6 jennifer 4:6 5:18 26:25 27:24 28:10 job 23:6		

literally 26:17 little 12:20 30:7 32:17 33:1 llc 20:22 llc's 19:11 llp 3:3 loan 17:20 20:23 21:11,13 22:21 23:13,15 31:12 loans 13:13 18:5 logic 15:24 long 8:18 13:18 look 11:22 17:16 18:22 20:13 looked 20:12 looking 18:21 looks 22:25 lord 1:22 lost 25:10 louisiana 5:25 6:3,4 love 15:21	major 9:24 make 9:10 19:4 23:22 26:2 makes 9:9 23:9 25:17 36:2 making 6:14 10:6 management 1:7 2:9 5:3,3,6 24:17 32:10 march 36:6,14 38:25 matter 1:5 5:2 mean 12:19 14:11 15:24 22:3 25:10,10 25:11 26:21 means 25:21 34:18 measure 10:23 mere 20:3 million 16:6,10 16:11 17:25 28:8 mineola 38:23 minute 6:16 13:20 19:17,17 20:3,9,9 missing 13:23 mod 17:20 23:15 modification 23:13 modified 31:12 modify 9:11 montalvo 34:11	month 31:15 monthly 25:17 months 14:20 14:24 24:1,5 32:13,16 moot 36:13 morning 5:13 5:16 mortgage 2:5 8:4 10:12,12 11:24 14:16 16:8 19:9,14 20:15,17,19 23:12,19 27:6 27:7 31:7,10 31:15 motion 2:1 5:19,21 6:7,7 7:3,14,19,19 8:1 9:3 11:18 11:18 13:5,6 13:22 15:1 20:12,13,15 21:1 22:9,24 23:7 24:4,7,9 25:18 27:14 29:22 30:10 32:2 35:9,10 35:21 36:2,5 37:5,6 motion's 7:21 movant 8:14 10:14,21 11:9 11:17 15:23 16:5,10,11 17:18,19,24 18:2,12 19:8	20:21 22:20 30:21 31:10 32:20 movant's 10:16 10:19 16:9 18:2 21:6 move 24:18 movement 9:17,22 moving 10:9 16:7 17:8 multiple 33:21 34:5,9
			n
m 3:15 made 7:3 13:4 18:8 19:20 30:6,6 31:13 34:23,24 madison 4:3 magically 33:11 maintained 18:11 21:13			n 3:1 5:1 37:1 38:1 nancy 1:22 national 2:3 8:2 nearly 17:25 necessarily 13:2 27:11 necessary 8:22 9:13 11:4,6 12:13 21:23 29:24 need 26:20 30:12,24 needed 16:25 nelson 2:2 3:3 5:17 never 13:1 27:25 35:8 new 1:2 3:13 3:21 4:4 6:4 8:9 10:11 23:13,25 26:3

nhl 1:3 night 19:6 nine 32:13 non 8:6,7 12:11 normal 9:6,8 9:16,23 12:20 normally 12:12 note 16:8 18:8 19:9,11,12,13 19:14 20:5,7,7 20:21 21:5,8 21:16,17 23:11 23:19 25:25 27:6,19 30:15 30:21 noted 20:15 notes 15:4 notice 22:17 24:15 30:17 32:8 noticed 30:12 noting 28:20 novel 10:19 november 24:5 31:23 number 27:4 ny 1:13 3:6,13 3:21 4:4 38:23	30:1 36:5 obtained 15:6 18:23 obviously 17:5 19:3 32:3 occupational 9:6,16,23 10:7 occupied 13:16 occupy 16:16 october 23:10 23:25 24:8 31:5,10,11,18 31:20 32:1 offers 30:7 office 3:17 5:14 6:19 7:10,23 18:18 31:9 offices 3:10 oh 6:6,14 17:11 22:24 28:21 okay 5:6,23 6:1 6:4,24,25,25 7:4,17,22,25 7:25 8:17 12:25 15:4 16:5 19:1 21:1 21:18 22:4,9 22:10,19 26:19 26:22 28:15,21 28:25 29:8,10 29:14,22,22 30:24 31:1 34:16 36:15 old 38:21 once 33:10 opening 6:21	operate 17:10 operating 6:20 25:18 opinion 15:21 opportunity 26:4 oppose 7:20 28:11 opposed 8:1 9:3 option 11:9 orally 7:13 order 5:22 6:8 7:21,24 8:5,10 9:21 20:22 24:8 27:22 32:1 33:24 35:10,22,25 36:4 orleans 6:4 owed 18:5,6 25:3 owes 6:20 owing 16:5,11 owned 8:8 owner 12:6 16:8 ownership 18:13 33:19	paid 18:12,13 pair 33:12 papers 16:7 23:7 24:4 25:19,25 park 3:12 part 11:14 15:25 33:18,19 34:2,14,20 parties 32:19 pass 2:5 8:4 20:20 pay 17:25 20:22 paying 19:2 payment 10:17 10:21 22:21 23:22 30:6,6 31:15 payments 10:6 18:9 23:22 pedro 19:12,15 20:7,15 31:5 pending 32:18 permission 14:22 petition 24:6 31:24 32:11,15 32:22 33:17 petitions 33:2 phh 21:12 plan 7:2 11:1,7 11:9 12:13,15 12:15 16:17,19 17:19,25 21:24 22:20 24:25 25:2 30:1
o			
o 1:21 5:1 38:1 object 7:11 25:2 objecting 7:13 36:8 objection 7:16 8:15 19:6 21:25 27:4		p p 3:1,1 5:1 25:18 p.c. 2:8 4:1 5:10,20 6:13 7:6 page 18:21 30:17 37:4	

plans 17:5 29:10 plaza 1:12 please 5:4,5 pm 36:18 point 13:23 16:17 17:6 27:25 35:17 portion 13:15 position 7:8,11 7:12 8:13,20 8:23 positions 15:23 33:2 possession 21:7 27:9,19 30:15 30:21 precludes 19:24 26:12 predecessor 21:6 23:11 presentment 7:13 president 20:25 pretty 6:23 price 22:13,15 prima 9:10 principal 23:14 29:5 31:12,13 35:19 prior 8:18 12:6 14:11 17:25 priority 12:1 private 19:16 20:16 23:11 31:7	privity 11:8,11 12:9 13:15 14:13,15 15:16 15:18 17:19 22:2 35:4 pro 5:19 6:7 probably 17:12 problem 21:18 21:19,20 proceed 24:13 32:6 proceedings 36:17 38:4 proceeds 10:20 32:21 produce 10:20 19:13 proof 6:21 18:16 27:4,5 27:10,12 proper 8:12 10:23 12:9 20:14 21:2 property 8:8 8:17,22 9:4,7 9:12,15,16,18 9:19,21,24 10:2,4,10,12 10:16,18,23,24 11:2,6,11 12:7 13:2,4,11,18 16:9,23 17:11 17:12,12 18:3 18:5,10,19 19:9 21:23 23:12 24:19,20 25:4,5,8,22	26:9,16 28:2,6 29:11,23 30:4 31:8,21 32:13 32:16,24,24 33:13,15,16,20 33:22 34:20 35:16 property's 9:7 9:24 11:4 12:17 16:24 proposed 11:7 25:2 proposes 9:8 proposing 28:13 protect 9:5 protected 9:15 10:5 protection 8:21 9:9 10:6 18:9 22:23,25 30:3 30:3,6 prove 12:13 proven 10:21 provided 34:21 provides 33:14 public 32:6 pull 18:21 purpose 25:10 pursuant 8:10 8:11 33:25 put 27:16 30:12	30:25 31:22 qva9 5:3
		r	r 1:21 3:1 5:1 38:1 raised 27:3 read 15:21 real 8:7 11:19 11:23 17:11 18:13 19:2 23:12 28:9 32:23 33:15,16 33:22 realistic 11:7 17:18,24 24:24 really 20:6 reason 29:24 reasonable 10:22 reasons 15:12 reassignment 20:4 receive 10:21 received 23:22 recognize 14:4 14:7,9 recommenced 23:25 record 36:4 38:4 recorded 24:3 recording 31:11 records 29:25 30:18 recourse 12:11
		q	quarterly 6:21 question 16:13 17:1 28:25

reema 3:23 5:14 6:18 7:9 7:23 18:17 reflected 16:6 reflects 9:20 refusing 14:4,7 14:9 regarding 31:4 regardless 7:18 7:19 registered 2:3 8:2 20:18 31:9 reimbursed 11:18 reiterate 27:25 reject 15:10 relationship 29:1 relevant 31:5 relief 2:1 7:19 8:5,6,7,7 11:13 11:20 20:2,13 20:14 21:1 22:4,10,24 24:8 25:24,24 26:2,15 27:14 27:16 28:11 29:22 30:17 31:2,4 32:2 33:6,7,13,25 34:7,21 35:7 35:21,22 37:5 37:6 relieve 13:25 relying 9:12 rem 23:3	remaining 31:12 remedy 10:13 10:18 remodeled 10:1 remodeling 9:25 remodify 13:13 remove 21:3 renders 28:5 renovations 9:21 rent 25:21 reorganization 8:23 9:13 11:5 11:6 12:14 16:24,25 17:3 17:5 21:23 24:25 25:2 28:13 29:24 reorganizing 25:21 repairs 9:20 repeatedly 34:19 replied 8:14 reply 8:14 12:5 15:21 26:3 reported 18:16 reports 6:20 25:18 required 11:11 requirements 13:22 requires 9:24 12:14	res 19:23 respect 8:7 30:2,9 31:2 33:14 36:1 respected 15:21 response 19:5 return 11:3 32:20 richmond 34:16 right 6:7,16 7:13,18,21,25 10:17 13:4,17 13:18 15:21 16:21 19:5 20:12 21:15 25:15 26:8,12 27:24 28:16,22 29:6 36:15,16 rios 19:12,15 20:7,16 23:16 24:1 29:2,8,10 31:6,14,19,21 32:12 rises 27:2 road 38:21 rooker 19:24 26:10,12 rule 23:2 rulings 37:3 run 28:11 rye 3:6	15:7,7 16:3 19:23 22:17 24:11,14,14,15 24:16,18 25:12 25:16 26:10 28:4,6,14 32:4 32:7,7,8,9,11 32:21,21,21 sales 34:18 sanctions 11:16 saying 13:20 13:24 17:2 25:14 says 11:10,13 13:7 16:13 17:4 30:18,20 scheduled 15:7 24:13,14 32:7 34:18 schedules 24:22 scheduling 32:6 scheme 11:14 33:18 34:2,14 schooner 20:5 20:7,16,23 second 7:18 10:3 15:8 20:23 31:3 32:13 section 34:7 secured 8:1 13:12 16:15 19:9,14,15 32:25 33:16,21
		s	
		s 3:1 5:1 sale 10:9,20,22 11:2,3 14:18	

33:25 securing 23:12 see 6:8,17 7:3 7:17 11:21 12:24 15:22 17:1 18:19 21:2,2,18,19 21:20 27:9 30:10 31:4 34:7 seek 20:2 seeking 16:22 24:20 seeks 11:16 24:19 seen 22:20 sell 11:2,11 13:6 16:23 22:12,14,19,20 24:19 25:7 26:8 28:9 35:10 sense 11:19 23:9 25:17 separately 5:5 series 2:5 8:5 20:20 served 24:15 32:8 service 21:1 26:1 servicer 21:12 21:13 27:18 30:15 servicers 27:9 shape 6:23 12:18	shell 17:10 show 9:17 19:14 20:14 24:23 25:19 34:24 shown 19:8 signature 38:6 signed 17:14 20:24 21:3 23:12 signing 20:8 simple 27:5 situations 13:14 six 34:12 sixth 34:14 slavutin 4:7 5:9,9 18:23,25 28:18 small 2:4 8:3,3 11:23 20:19 solutions 38:20 somebody 13:21,23 28:16 28:25 33:8 sonya 2:25 38:3,8 sorry 11:5 29:18 31:4,13 south 3:12 southern 10:25 speak 26:23 special 19:14 28:23 specifically 19:10	standing 6:1 19:7,17,19 20:1,11,14 21:19,19,21 26:8 27:2,3,10 27:13,14 30:9 30:10 start 26:25 state 9:20 19:20 24:10 27:8,8 32:20 stated 31:8 statement 7:2 states 1:1,11 3:17,19 5:15 6:19 7:8,10,13 9:14 18:18 20:8 22:6 29:16 status 2:11 6:17,25 19:17 statute 9:2,2 stay 2:1 5:21 8:6,11,12 9:11 10:5 13:22 15:1 19:12,17 20:2 22:4 24:8 25:24 27:15 29:23 30:17 32:2 33:10,10 33:14 35:21,23 stayed 32:18 32:21 staying 24:17 31:24 32:11 stipulate 36:2	stipulated 22:5 stipulation 8:19 15:3 stop 17:15 strategically 34:10,12 street 3:20 8:8 stuff 12:5 subject 9:16 31:21 subsection 33:15 subsequent 10:1 sufficient 34:6 34:13,21 suite 3:5 38:22 sum 31:6 supplemental 8:15 19:6 sur 26:3 sure 16:18 21:10 27:22 t t 38:1,1 take 11:22 21:20 27:15 taken 8:24 talk 23:3 26:21 talking 11:25 19:18 22:19 tax 11:23 taxes 11:23,23 18:13 19:3 tcn 1:7 2:9 5:2 5:6 6:13 24:16 29:11 32:10
---	--	---	---

36:6 tear 9:6,8,17 9:23 10:7 tell 6:15 34:22 35:6 telling 13:10 13:14 tenant 10:1 tenants 10:1 terms 31:14 terrible 12:18 tests 11:20 texas 6:3 thank 5:15 6:10,18,23 7:11,24 23:5 23:18 25:14 30:22 36:15 theodore 3:5 thing 17:2 30:13 35:1 things 13:13 think 6:16 15:11,13 22:23 27:2 28:8,12 30:4 33:9 34:23,24 third 10:9 thursday 5:19 time 8:19 26:3 26:22 27:3 29:12 31:5 34:1 35:8,9 timed 34:10,12 timely 21:1 timing 8:25 26:15,15 33:4	title 17:10,13 31:21 titled 24:2 tilt 14:24 today 7:5,7 took 15:15,15 total 16:5 totally 25:10 34:25 touches 30:13 touching 26:13 transcribed 2:25 transcript 38:4 transfer 8:24 12:9 13:11 14:6,11,17 15:14,15 22:1 26:16 28:2 29:12 32:24 33:12,19 transferee 14:12 15:17 transferred 14:22 29:14 32:12,16 transferring 14:12 transfers 12:6 tried 22:4,9 trouble 27:21 true 18:24 33:7 38:4 trust 2:3 8:2 trustee 2:3 3:17,18 5:15 6:19 7:8,10	18:15 20:18 22:6 36:2 trustees 8:2 18:18 try 18:20 22:11 22:11 23:8 25:7 twice 33:10 two 8:25 9:1,7 18:5 20:21 32:23 33:5,12 34:17 type 13:13 typically 28:5	6:19 7:8,10 18:18 22:6 unknown 1:25 unpaid 31:12 unsecured 12:2 12:22,24 13:15 13:17 uphill 6:15 upload 7:21,24 35:22,25 use 16:2 17:22 17:22 36:6 utilize 15:14 25:22
		u	v
		u.s. 1:23 3:4,18 18:15 36:2 u.s.c. 33:22 ultimately 18:1 23:20 31:18 unauthorized 14:15 unaware 29:4 under 10:11 13:4 14:1 22:19 28:4 33:15 34:7 35:16 underlying 16:8 27:7 understand 11:21 12:4 14:14 understanding 22:8 united 1:1,11 3:17,19 5:14	vacatur 8:10 valuable 28:14 value 9:5,7,18 9:22,24 14:1 18:3,4,11 25:4 28:5 valued 16:9 varick 3:20 veritext 38:20 vice 5:19 6:7 20:24 view 21:24 28:1 virtue 15:18 voluntary 24:6 vote 13:8 16:18 16:20
			w
			waive 35:23 waiver 8:11 35:23,24

walk 22:12,16 22:24	working 18:18
want 25:13,13 25:13 26:21 27:21 36:1,6	works 35:19
wants 26:22	worksheet 16:7 30:17,25
washington 5:25	worn 9:18
water 11:24 12:2 13:4 14:2 35:16	worth 12:17,20 18:6 22:14
way 16:4 22:11 22:15 30:7,8	written 32:8
wayne 3:10,15 28:19	x
wear 9:6,8,16 9:23 10:7	x 1:4,10 37:1
weissberg 3:8 5:16,17 12:19 14:19,19 15:5 16:18,20 21:7 21:9,11,17,25 22:7,7 23:4,5 23:17,19 25:15 26:14,19 27:15 27:22 29:18 30:14,16,16,20 35:22 36:11	y
weissberg's 30:2	yakubov 2:8
winner 22:25	yeah 6:7 7:4 14:14 19:1 27:13
won 35:24	year 23:23
word 27:15 31:4	years 6:3
words 12:12	yesterday 26:1
work 35:20	yield 11:3 25:16
	york 1:2 3:13 3:21 4:4 8:9 10:11